

Message Text

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PAGE 01 STATE 124052
ORIGIN SCS-05

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FM SECSTATE WASHDC

TO AMEMBASSY MADRID

UNCLAS STATE 124052

E.O. 11652: N/A

TAGS: CGEN

SUBJECT: TAKING OF DEPOSITION IN SPAIN

REF: 76 STATE 164575; 76 MADRID 4531

1. IN REFERENCED STATE TELEGRAM, DEPT FOLLOWED EMBASSY'S SUGGESTION NOT TO PRESS GOS ON QUESTION RAISED IN MADRID REFTEL, CONCERNING RIGHTS OF U.S. CONSULAR OFFICERS TO TAKE DEPOSITIONS IN SPAIN. BY NOT PUSHING FOR AN ANSWER, WE HOPED TO CONTINUE STATUS QUO, UNDER WHICH DEPOSITIONS WERE ROUTINELY TAKEN FROM PERSONS OTHER THAN THOSE PROVIDED FOR IN 1902 TREATY FRIENDSHIP AND GENERAL RELATIONS.

2. SUIT HAS RECENTLY BEEN FILED IN U.S. DISTRICT COURT IN CALIFORNIA WHICH MAY PRECIPITATE ANSWER FROM SPAIN WHICH WE SOUGHT TO AVOID LAST YEAR. CASE WAS BROUGHT ON BEHALF OF SEVERAL SPANISH NATIONALS EMPLOYED BY U.S. CONTRACTOR DRILLING FOR OIL IN NORTH SEA. SUIT ARISES OUT OF INJURIES RECEIVED BY SPANISH NATIONALS WHILE WORKING ON OIL RIGS OFF OF SCOTLAND.

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3. PLAINTIFFS' ATTORNEY (A CALIFORNIA LAWYER NAMED GRAHAM) IS SEEKING TO HAVE DEPOSITIONS OF HIS WITNESSES, ALL SPANISH NATIONALS, CONDUCTED IN SPAIN. HE INTENDS TO

COMMISSION U.S. COURT REPORTER FOR THIS PURPOSE, AND FLY TO PONTEVEDRA, SPAIN, WHERE DEPOSITION WILL TAKE PLACE. ATTORNEY FOR DEFENDANTS (CHARLES FERGUSON-LAWRENCE) IS

RESISTING THIS PROCEDURE VIGOROUSLY. IN THE PROCESS, THEY CONTACTED DEPT.

4. BASED ON REFTELS, DEPT INFORMED THEM THAT CONOFFS HAVE ROUTINELY TAKEN DEPOSITIONS FROM WITNESSES OF ANY NATIONALITY IN SPAIN, BUT ADVISED THEM THAT SPANISH GOVT MIGHT NOT AGREE WITH THIS PRACTICE. DEPT RECLINED TO RELEASE REFTELS TO EITHER SIDE IN HOPE THAT MATTER COULD BE RESOLVED WITHOUT INVOLVING SPANISH.

5. ABOVE BACKGROUND IS PROVIDED BECAUSE GRAHAM INTENDS TO CALL ON EMBOFF (CHEEVERS) FOR FURTHER INFORMATION. WHEN HE DOES, DEPT SUGGESTS THAT EMBASSY TAKE POSITION THAT CONOFFS ARE ENTITLED TO TAKE TESTIMONY FROM ANY WILLING WITNESS IN SPAIN IN ABSENCE OF SPANISH LAW OR REGULATION TO CONTRARY. AUTHORITY FOR THIS VIEW IS FOUND IN ARTICLE 5 (J) OF VIENNA CONSULAR CONVENTION.

6. DEPT ASSUMES THAT EMBASSY HAS NO INFORMATION ABOUT LEGALITY UNDER SPANISH LAW OF DEPOSITION TAKEN BY A PERSON OTHER THAN A CONOFF. IF THAT ASSUMPTION IS CORRECT, EMBASSY SHOULD NOT TAKE POSITION ON ACCEPTABILITY OF

PRACTICE, ALTHOUGH IT IS FREE TO INFORM MR. GRAHAM OF ITS KNOWLEDGE OF ANY INSTANCES IN WHICH SUCH DEPOSITIONS HAVE BEEN TAKEN.

7. PLEASE KEEP DEPT INFORMED OF DEVELOPMENTS IN THIS MATTER; ALSO PLEASE ADVISE DEPT WHETHER MFA PURSUED UNCLASSIFIED

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QUESTIONS RAISED IN REFTELS AFTER JULY, 1976. VANCE

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